

# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

- - -

ALISON O'DONNELL,

Plaintiff,

vs.

Case No. 1:16-cv-2450  
Judge Donald E. Nugent

UNIVERSITY HOSPITALS  
HEALTH SYSTEM, et al.,

Defendants.

- - -

DEPOSITION OF NAVEEN K. ULI, M.D.  
Monday, August 7, 2017

- - -

The deposition of NAVEEN K. ULI, M.D., a Defendant herein, called for examination by the Plaintiff under the Federal Rules of Civil Procedure, taken before me, Diane M. Stevenson, a Registered Diplomate Reporter, Certified Realtime Reporter, and Notary Public in and for the state of Ohio, pursuant to notice, at The Spitz Law Firm, 25200 Chagrin Blvd., Suite 200, Beachwood, Ohio, commencing at 12:07 p.m., the day and date above set forth.

Stevenson Reporting Service, Inc.  
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1 Dr. O'Donnell about her being able to speak up  
2 or be more involved with these Wednesday  
3 conferences and she said, "Well, I am shy," and  
4 then she talked about her background and talked  
5 about -- said she has social anxiety, what was  
6 your response to that?

7 A. Well, that was a big discussion among our own  
8 faculty as to how can they accommodate that.  
9 And all the faculty and me believe, and to this  
10 day believe, that that is a critical part of  
11 fellowship training for many reasons.

12 One, it tells us the depth of a person's  
13 thinking of a certain problem, we can evaluate  
14 that, and that allows us to evaluate the  
15 fellow's critical thinking skills, the depth of  
16 knowledge, the approach to clinical medicine,  
17 and their problem-solving skills, which are an  
18 integral part of fellowship training, both for  
19 training and for us to evaluate how they are  
20 doing in terms of their various competencies  
21 during the fellowship training.

22 And secondly, communication is a critical  
23 aspect of a role of a consultant once you get a  
24 job. So we thought that that was really  
25 important and we couldn't really excuse her

1           you discuss other possible alternatives of  
2           evaluation other than what I would call the  
3           cold-calling approach and where you just pose a  
4           question?

5                     Did you consider whether or not she could  
6           receive the same education and be evaluated in  
7           the same way if she was allowed to have some  
8           preparation as to these questions before being  
9           cold-called?

02:43 10   A.    No, because that is the expectation of all  
11           fellows because that is a critical function of  
12           a consultant.

13   Q.    Did you consider whether or not she could have  
14           been cold-called on or given or have these  
15           questions raised either by you or another  
16           faculty member maybe in a more private setting  
17           instead of being in this larger environment?

18   A.    No.

19   Q.    Would that have been -- would that have been a  
02:43 20           successful way to evaluate her knowledge on  
21           these issues?

22   A.    I don't think so, because you -- and that is a  
23           critical function for training and for function  
24           as an endocrinologist, because you might be  
25           with a patient and, as you visit the patient,

1 the patient parent asks you questions, and you  
2 would be forced to answer there right then, and  
3 there is no time to go back and say, "I will  
4 answer this later."

5 Q. I am sorry, go ahead.

6 A. Training and function as a consultant requires  
7 that kind of a back and forth and being able to  
8 answer questions in the moment.

9 Q. Were you ever the attending in the clinic who  
10 would assist Dr. O'Donnell in those settings  
11 that we talked about where she would see a  
12 patient, come into the room and talk to the  
13 treating physician? Was that ever you in that  
14 role?

15 A. Sometimes, yeah. Since we are six, seven of us  
16 at that time, it would have been any one of us.

17 Q. But sometimes you were in this role?

18 A. Sometimes I would be.

19 Q. And then you would talk to her and both of you  
20 would go back in together and further treat the  
21 patient or advise the patient?

22 A. Yes.

23 Q. I mean, outside of these Wednesday conferences,  
24 this specific setting, did you ever observe  
25 Dr. O'Donnell having trouble answering

1                   So it was a balancing act.

2   Q.       Who was the person who communicated? You said  
3           the research manager. Who was that?

4   A.       I believe it was either Dr. Zimmerman or  
5           Dr. Koontz, Michaela Koontz.

6                   (Plaintiff's Exhibit 32 was marked for  
7           identification.)

8   Q.       I am going to hand you what I have marked as  
9           32. This is an e-mail on February 12, 2012,  
03:21 10          from Dr. O'Donnell to, it looks like, pretty  
11          much the whole faculty?

12   A.       Yes.

13   Q.       Correct?

14   A.       Yes.

15   Q.       "Subject: Wednesday conference." It says,  
16           "Dear Faculty, it has come to my attention that  
17           many of you wish for me to speak more during  
18           Wednesday conferences and are interpreting my  
19           silence as ignorance.

03:21 20                   "However, my cultural/religion, learning  
21           style, shyness and anxiety make it extremely  
22           difficult for me to shout out answers."

23                   Is this the document you are referring to  
24           where she first mentioned cultural/religion,  
25           shyness and anxiety?

1 A. No, I had a personal meeting way before this  
2 where she mentioned it.

3 Q. Where she had brought these up?

4 A. Yes, especially her family upbringing is that  
5 people are not allowed to speak out of turn is  
6 what she specifically told me.

7 Q. It says, "Therefore, I invite you to ask me  
8 questions. In addition, I intend to make more  
9 than the required number of presentations, (a  
03:22 10 very interesting topic I am excited to present  
11 on 2/22). Hopefully, this is a compromise to  
12 suit everybody's needs.

13 "I believe that a training program should  
14 take into account a variety of learning styles,  
15 not everyone learns the same way. If you have  
16 any suggestions how we can work to solve this,  
17 please let me know."

18 Did you speak with Dr. O'Donnell about  
19 this e-mail or about what she was proposing in  
03:22 20 this e-mail?

21 A. I don't recall. I can't remember.

22 Q. Did you speak with any of the faculty members  
23 about this e-mail and about Dr. O'Donnell,  
24 saying that she invited questions and that she  
25 planned to make more than the required number

1 of presentations, and that she was trying to  
2 look for a compromise that would suit  
3 everybody's needs?

4 Did you discuss any of that with faculty  
5 members and whether that was something that  
6 could be done, couldn't be done, anything like  
7 that?

8 A. We had multiple faculty meetings, but I don't  
9 know what time frame, were those before or  
03:23 10 after. I believe we had at least one or two  
11 more after this where the unanimous opinion was  
12 that you cannot not grade, not evaluate her, on  
13 the other aspects of the Wednesday conferences.  
14 There couldn't be a substitute.

15 We needed in-the-moment questions and  
16 answers and how people respond to that to  
17 really gauge how well the person understands  
18 the subject and how well one is able to  
19 communicate.

03:24 20 (Plaintiff's Exhibit 33 was marked for  
21 identification.)

22 Q. Handing you what I have marked as 33, this is a  
23 performance alert notice for Alison Matthews.  
24 Dr. O'Donnell, in the pediatric endocrinology  
25 program. Did you prepare this document?



1 of that, I was not aware of the diagnosis. Up  
2 until that time it was just not made clear to  
3 me that it was a medical diagnosis, it was  
4 social anxiety.

5 Q. Would your actions have changed if she had used  
6 the word "general anxiety disorder" during any  
7 of your conversations?

8 A. Well, we would have gotten feedback from the  
9 psychologist as to what the treatment  
03:33 10 modalities are, but still would require her to  
11 participate in the Wednesday conferences  
12 because that is an essential, integral part of  
13 the fellowship training.

14 And without us getting feedback, there is  
15 no other way we will be able to gauge the  
16 competence of a fellow in communication and  
17 knowledge and patient care other than putting  
18 on the spot and having to be able to do that.

19 But we will be open to any suggestions  
03:33 20 that the psychologist would have for us in  
21 terms of how can you help a person learn better  
22 and be able to function in that role?

23 Q. Obviously, then, you never had any discussions  
24 with Dr. Adon, her treating physician --

25 A. No.

1 Q. -- for the disorder during Dr. O'Donnell's time  
2 at the fellowship?

3 A. Not at all.

4 Q. You did learn at some point, because you had  
5 meetings about it, that she had formally  
6 requested an accommodation?

7 A. Yes.

8 Q. Were you told or shown any documentation as to  
9 what accommodation she was requesting?

03:34 10 A. Yes, there were two main accommodation  
11 requests. One was that she should be excused  
12 from being evaluated and graded during the  
13 Wednesday conferences, which I took back to our  
14 faculty, and they said that that cannot be done  
15 because that is an integral and essential part  
16 of fellowship training. And our ability to  
17 evaluate a fellow, that is a major part of how  
18 we evaluate fellows.

19 The second request that we got for  
03:35 20 accommodation was that she be allowed to work  
21 exclusively with two of the junior-most faculty  
22 because she was much more comfortable working  
23 with them, and not have to work with any of the  
24 senior faculty. And the junior faculty did not  
25 involve me, it was two of the most junior

1 during the accommodation process about whether  
2 that could be an adequate alternative to  
3 evaluating her based on a different set or a  
4 different method of questioning her?

5 A. We did, we discussed alternatives. If we  
6 didn't evaluate her based upon the Wednesday  
7 conferences, how else can we evaluate those  
8 specific aspects? And we said: That is  
9 impossible to do.

03:42 10 Q. Well, and specifically in her request there is  
11 a mention -- do you recall it stating that she  
12 was looking to be evaluated or not evaluated  
13 regarding unrehearsed instances of speaking or  
14 unrehearsed presentations?

15 A. Yes, again, that is something we can't do  
16 because when you see a patient it is  
17 unrehearsed. And when you get a consultation  
18 request, it is unrehearsed.

19 And when you have to see a patient in the  
03:43 20 pediatric ICU at 3:00 and the patient is  
21 critically ill, it is unrehearsed, it cannot be  
22 rehearsed.

23 So we need to be able to figure out: Is  
24 she able to think critically on a sick child?  
25 And you need unrehearsed, in-the-moment

1 response and on her own as well as responding  
2 to questions that I might ask her.

3 Q. Now, some components of the Wednesday  
4 conferences could be rehearsed or prepared for,  
5 correct?

6 A. Absolutely.

7 Q. Because you had told or employees were  
8 informed, if they were given a presentation  
9 ahead of time, that they might be graded on  
10 that evaluation -- or graded on that  
11 presentation?

12 A. Yes.

13 Q. So they would have known beforehand, correct?

14 A. Plus, they have assigned topic presentations  
15 which the schedules are made weeks and months  
16 in advance. So they have a topic presentation  
17 to give on, say, September 15th.

18 And then the fellow chooses what topic he  
19 or she wants to prepare on. And they do a  
20 PowerPoint, they go in-depth, and they have all  
21 the time and the opportunity to do an in-depth  
22 look into that topic and then do a  
23 presentation. So those are, certainly,  
24 rehearsed.

25 Q. Now, I know you testified that you were not

1           guessing.

2   Q.     And it looks like on the bottom left of most of  
3           these pages it looks like it might be referring  
4           to a version or v9, and then it says, "July 1,  
5           2012"?

6   A.     Yes.

7   Q.     Is that indicating when this was last updated,  
8           this version of the manual?

9   A.     I would guess so.

03:56 10   Q.     You are not sure?

11   A.     I am not sure. I don't know how often they  
12           update these.

13                       MR. BEAN:                       Let's take a  
14           break. I just have to go through stuff. I am  
15           through my documents, so I should be pretty  
16           close.

17                       (Brief recess.)

18   Q.     Let me know when you are ready, Doctor.

19   A.     Just one moment. I will e-mail my folks at  
04:02 20           Westlake.

21   Q.     Did you ever have a conversation with  
22           Dr. O'Donnell or make a comment towards her  
23           that you felt that people of African descent  
24           had hair that is wild and unruly?

25   A.     Nope. That all comes from a clinical case

1 where before coming to Cleveland I worked for  
2 three years in Brooklyn, New York, and my boss  
3 there told me that there is big contingent of  
4 Caribbean immigrants there.

5 And being a pediatric endocrinologist,  
6 there is one thing that I had to realize, that,  
7 culturally, the Caribbean population, the women  
8 used hair products that had placental extracts  
9 in them. And so when we get a patient  
10 referred, a girl, a young girl with breast  
11 development, premature breast development, you  
12 have to ask about, specifically ask, if the  
13 family uses hair products that have placenta in  
14 them.

15 And he said only in his career he has had  
16 multiple such presentations, and so you have to  
17 know your cultural background of your patients,  
18 otherwise you cannot do a good job, and you are  
19 going to miss critical information.

20 That was a point that I was trying to make  
21 to Dr. O'Donnell, that when you have referral  
22 of a patient with African descent referred to  
23 you for early development of breasts in a girl,  
24 you specifically have to ask the question  
25 whether the family uses cosmetics, hair

1 products that have placental extracts in them.  
2 Q. So is it your testimony that you did make that  
3 comment, but that was your explanation as to  
4 why had you made it, or you didn't make the  
5 comment?

6 A. I didn't make the comment specifically about  
7 the hair, but I know exactly where that comes  
8 from, from a discussion of a particular  
9 patient.

04:05 10 Q. Did you use the word wild and unruly --

11 A. No.

12 Q. -- to refer to African-American's hair?

13 A. No, not at all. Not at all.

14 Q. Were there ever any occasions where you  
15 instructed Dr. O'Donnell to cover another  
16 fellow, go cover their clinic or cover their  
17 assignments because that fellow was unable to  
18 go?

19 A. I might have. And that is, again, no different  
04:06 20 than we do for other fellows.

21 Q. So you may have?

22 A. Might have, yeah.

23 Q. Can you think of a specific time?

24 A. I can't think of a specific, no. But that  
25 happened many times where a fellow who was